

17 OCT 2000



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Patent Cooperation Treaty
Legal Office

Address: Assistant Commissioner for Patents
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Washington, D.C. 20231

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In re Application of
James R. BROACH et al
Application No.: 09/581,861
PCT No.: PCT/US98/21168
Int. Filing Date: 07 October 1998
Priority Date: 07 October 1997
Attorney's Docket No.: CP1-012C8US
For: Yeast Cells Expressing Modified G Proteins
And Methods of use Therefor

DECISION ON

PETITION UNDER

37 CFR 1.137(b)

This is in response to the "Petition for Revive an Abandoned Application Pursuant to 37 CFR § 1.137(b)" filed on 16 June 2000. The required petition fee (\$1,210) and the surcharged required under 1.492(e) (\$130.00) has been charged to Deposit Account No. 12-0080 as authorized in the petition.

BACKGROUND

On 07 October 1998, this international application was filed, claiming an earliest priority date of 07 October 1997.

On 06 April 1998, a Demand electing the United States was filed in this international application. Accordingly, the deadline for paying the basic national fee in the United States under 35 U.S.C. 371 and 37 CFR 1.495 was 07 April 2000. This international application became abandoned with respect to the United States at midnight on 07 April 2000 for failure to pay the required basic national fee.

On 16 June 2000, applicant filed in the United States Patent and Trademark Office (PTO) the instant petition and a transmittal letter for entry into the national stage in the U.S. under 35 U.S.C. 371, which was accompanied by, *inter alia*, the U.S. basic national fee, the copy of the international application, and unexecuted oath or declaration.

DISCUSSION

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof; (2) the petition fee as set forth in § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

Applicant's statement that "The entire delay in filing the Transmittal Letter to the United States Elected Office and the basic fee for entry into the U.S. national stage until the filing of this petition pursuant to 37 CFR 1.137(b) was unintentional" is being construed as a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. Petitioner must notify the Patent and Trademark Office if such an interpretation of the statement in the petition is not correct. Thus, the statement in the petition is being accepted in satisfaction of 37 CFR 1.137(b)(3).

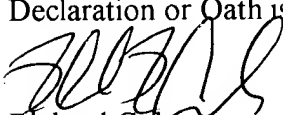
Moreover, petitioner has provided: (1) the proper reply by submitting the basic national filing fee, and (2) the petition fee set forth in § 1.17(m). In this application, no terminal disclaimer is required.


Accordingly, the petition is deemed to satisfy requirements (1), (2), (3) and (4) under 37 CFR 1.137(b).

DECISION

The petition under 37 CFR 1.137(b) is GRANTED.

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for continued processing under 35 U.S.C. 371 and for issuing a PCT/EO/DO/form 905(Notification of missing requirements) to inform applicant that an executed Declaration or Oath is missing.


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